

29. A utility apron as recited in claim 10, wherein the pocket includes at least one pleat.

30. A utility apron as recited in claim 18, wherein each of the pockets of the plurality of pockets includes at least one pleat.

31. A utility apron as recited in claim 19, wherein at least one of the first and second pockets includes at least one pleat. --

REMARKS

Rejection of Claims 1-26 Under
Section 103(a) (Lindsay and Berry et al.)

Independent claim 1 patentably distinguishes over Lindsay (U.S. Patent No. 4,993,551) because Lindsay fails to disclose or suggest a utility apron in a combination of elements which comprise a shell having lip portion for contacting the lip of the support device and an exterior surface for disposition at the exterior of the support device, and which further includes a pocket disposed upon the exterior surface of the shell away from the longitudinal axis, the pocket including a resilient opening, the size of the opening being variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

Lindsay merely discloses a tool holder with pockets, wherein the tool holder is used with a 5 gallon bucket to hold carpenter or tradesman tools. Lindsay specifically fails to disclose a utility

apron wherein any of the pockets have a resilient opening, and wherein the size of the opening is variable depending upon the extent to which the resilient opening is extended, as recited in claim 1.

The Office Action suggests that it would have been obvious to add the elastic bands of Berry et al. to the tool holder of Lindsay, and that the size of the pockets in the resulting Lindsay/Berry et al. tool holder do not add patentable significance. Applicant respectfully disagrees. As explained in Applicant's prior response of September 8, 1998, which is expressly incorporated herein by reference, the Berry et al. document is directed to women's carrying bags such as purses, and therefore constitutes nonanalogous art. It therefore may not be rightfully applied to Applicant's invention.

The examiner's comments regarding the analogous art issue in the Office Action at pages 3-4 have been considered, but Applicant continues to believe Berry et al. in fact is nonanalogous art. The statement that "all are generally bags with compartments, concerned with the same general function of storing items for use" is inaccurate. Berry et al. certainly is directed to a bag with compartments, as is Kikas (discussed below). The present invention, however, is directed to a utility apron for use with a particular type of support device as recited in the claims. It is

not a bag. One of ordinary skill in the utility apron arts would not have been led to consult the bag arts if looking to better secure items, or to enable the apron to flexibly secure relatively larger items than tools of the type shown in Lindsay.

Even if Berry et al. were analogous art, which it is not, the necessary combination and modifications suggested in the Office Action cannot be made because neither Lindsay nor Berry et al. provide any suggestion or motivation for making these needed changes. Only by impermissibly relying on hindsight afforded by the invention can such combination be made. Berry et al. is nonanalogous art, and therefore would not provide motivation or suggestion to designers of utility aprons for use on support devices as recited here.

As to the sizes recited in the dependent claims, neither Lindsay nor Berry et al. disclose or suggest the recited sizes, and therefore fail to render these claims obvious. When making the obviousness determination, one must look to the claim as a whole, and to the references for what they fairly teach as a whole. The obviousness analysis as set forth in *Graham v. John Deere*, 383 U.S. 1 (1966), and as repeatedly applied by the Court of Appeals for the Federal Circuit, requires that each claim be viewed independently, and that the cited and applied references provide the teaching, motivation or suggestion to render the claimed invention obvious.

The undersigned is aware of no black and white rule that precludes patentability merely because a distinguishing feature includes a dimension or size difference relative to the prior art. The relevant inquiry is whether the prior art fairly read teaches or suggests to one of ordinary skill in the art. Claims 3-8 distinguish over Lindsay and Berry et al., for example, in that these documents do not teach or suggest a utility apron that includes a pocket with a resilient opening as recited in claim 1, and further because they do not teach the specific dimensions recited in those claims. The specification notes that these sizes advantageously permit its such as cleaning items, bottles, cans, sponges, etc. to be securely contained. See the specification, for example, at page 5, line 15 through page 6, line 2. Nothing in Lindsay or Berry et al. suggests such an apron with those recited sizes. The Lindsay and Berry et al. devices are described as being put to completely different uses, none of which would dictate the sizes recited in the present claims 3-8.

In view of the foregoing, claims 1-9 patentably distinguish over Lindsay and Berry et al. They are in condition for allowance, and Applicant therefore requests that the rejection be withdrawn and that these claims be allowed to issue.

Claims 10-18 patentably distinguish over Lindsay and Berry et al., taken alone or in combination, for the reasons set forth above

with respect to claims 1-9, respectively.

Claims 19-26 also patentably distinguish over Lindsay and Berry et al., taken alone or in combination, for the reasons set forth above with respect to claims 1-9, respectively.

Rejection of Claims 1-26
Under Section 103(a) (Adding Kikas)

The Office Action further rejects claims 1-26 as being unpatentable over Lindsay and Berry et al, and further in view of Kikas. Again, Applicant respectfully disagrees with the Examiner's position. Independent claims 1, 10, and 19 patentably distinguish over Lindsay and Berry et al., taken alone or in combination, as explained above.

Kikas is not analogous art. Kikas discloses a utility bag for mounting on a closet door and holding clothing items and the like such as stockings and shoes. A person of ordinary skill in the art pertaining to utility aprons for use on a support devices with openings as recited in the preamble of these claims would not have looked to the art of clothing racks and the like when designing in the field of such utility aprons.

Even if Kikas were analogous art, which it is not, these independent claims patentably distinguish over Kikas, alone or in combination with Lindsay and Berry et al., because Kikas fails to provide any suggestion or motivation to combine the transverse elastic band of Kikas with the utility apron of any type, including

the tool holder disclosed in Lindsay. Impermissible hindsight would be required to make such modification. The limitations Kikas are similar to those of Berry.

Dependent claims 3-8, 12-17, and 21-26 further limit the size of the pockets to be adequate to retain such large items as cleaning supplies, bottles, and the like. The Office Action cites *In re Rose*, 105 USPQ 237, 240 and *In re Yount*, 80 USPQ 141 to support the contention provided in the Office Action that size generally does not support patentability. Such a blanket, black and white statement is not supported by the case law in this area, and does not override the numerous modern and recent cases which hold that the *Graham v. John Deere* factors must be applied, and that the claimed invention must be viewed as a whole without impermissible use of hindsight.

In re Rose and *In re Yount* are distinguishable and therefore limited to their specific the facts. Moreover, they are not pertinent to this situation. For example, in *In re Yount*, the applicant argued that the extremely large size of his bag patentably distinguished it over the prior art. Yount did not include the limitation of size in the claimed invention, and Yount stated in his specification that "the invention is also applicable to the fabrication of relatively smaller bags." The situation provided in *In re Yount* is inapplicable to Applicant's invention

and the cited prior art.

In view of the foregoing, claims 1, 10 and 19 patentably distinguish over these references and are in condition for allowance.

Dependent claims 2-9, 11-18, and 20-26 patentably distinguish over Lindsay, Berry et al. and Kikas, taken alone or in combination, in that they depend from, and more specifically recite the invention as set forth in independent claims 1, 10, and 19 respectively. These claims add further limitations on the pocket and the resilient opening, and thus further distinguish over the cited and applied art.

Addition of New Claims 27-31

Applicant has amended the application to add new claims 27-31. These claims recite additional features or aspects of the invention wherein pleats are incorporated into the pockets. Such pleats may cooperate with the resilient openings to permit flexible yet secure containment of items within the utility apron. They are supported in the patent specification, for example, at pages 15 and 16, and as shown in the drawing figures. These claims further distinguish over the cited and applied references.

Notice of Draftsperson's Patent Drawing Review

Applicant acknowledges the Notice of Draftsperson's Patent Drawing Review. Applicant will make the requested corrections, but

wishes to defer submitting formal drawings with these corrections until payment of the issue fee.

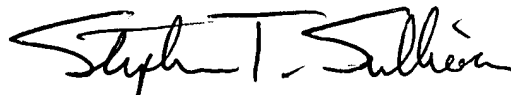
Conclusion

In conclusion, Applicant respectfully submits that claims 1-26 as presented, and new claims 27-29, patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

A Petition for a three-month extension of time and fee are being filed concurrently herewith. If any additional fees or amounts are due in connection with the filing of this paper or the prosecution of this application, please notify the undersigned so the fee can be promptly submitted.

Dated: May 17, 1999

Respectfully submitted,



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Date of Deposit May 17, 1999

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed Assistant Commissioner for Patents, Washington, D.C. 20231.

